

EXHIBIT 41

OPINION

The Intelligencer: A Vision for the Year 2020

H.C. Ogden, Publisher 1904-1943

Perry A. Harbo, General Manager — John McCabe, Managing Editor

Tuesday, January 6, 2018

Teach Students About Pain Pills

Hundreds of Ohioans, many of them young people, die of drug overdoses every year. While different substances are to blame, a common thread often is involved in drug abuse.

It is prescription painkiller pills. Addiction to them is bad enough, but it often leads painkiller victims to try — and become hooked on — harder drugs.

A new state law mandating that Ohio public schools educate students on the dangers of prescription painkillers is an excellent idea.

As an Associated Press story pointed out, painkiller pills are an epidemic among young people. It has been reported that one-fifth of high school students abuse painkillers. Almost always, they are obtained illegally but with relative ease.

Obviously, one danger is that young people will believe legal drugs such as painkillers are safer than illegal substances such as heroin. Too many die in learning that is not the case.

Don't Aid Obama With GOP Bickering

Through much of his

So educating students on the dangers of painkillers — starting at an early age — is important.

That said, school-based anti-drug programs need to be monitored closely to ensure they are effective.

Too many school programs intended to safeguard children from dangers ranging from driving while intoxicated to abusing drugs are based on fad approaches. In effect, they are marketed well — but may not be as effective as promoters claim.

Ohioans cannot afford to waste time, school resources, money and their lives on feel-good abuse programs that do not really deter young people from dangerous behaviors.

So by all means, Ohioans should be using schools as one weapon in the war against drug abuse. But results should be tested objectively to ensure the anti-painkiller program is working. If it is not, it should be abandoned and another more effective approach should be tried.

Whoever the next president is, he will seek a second term in the year 2020. For the Republicans, they should take advantage of 2020 and tell us with foresight, not with hindsight, what their vision for America is.

In the next year, we could see close to two dozen Republicans go up and down in the polls, rise and fall in media attention and scramble for dollars. They will each go on news shows and before the public with multi-point plans to fix problems, change things and make us safer. The Republican presidents will blame much of what ails us on Barack Obama.

Frankly, the Republican campaign has the potential to turn into an Obama-bashing festival of the first order. Any malady can be blamed on him. Any foreign policy disruption will be placed on his shoulders. But what of the GOP?

This is where Mitt Romney failed spectacularly. He decided to approach the job of president not as president, but as CEO of a large corporation. His rhetoric was in terms of multipoint plans and business acumen. He won the war for the hearts and souls of chief executives and lost the real poll question, "who cares for me?"

Republicans running in 2016 need to spend less time blaming Barack Obama and more time telling the public how the country will look in



ERICK ERICKSON

2020. They should avoid the platitudes and idealized paint the picture.

We know right now that the middle class is stagnant. We know that the rich continue to get rich, but the poor are more and more subsidized and left uncomfortable with no way to break into the middle class. We know health care costs are going up. We know black Americans are worse off economically now than before President Obama took office. We know Russia, China, North Korea and other nations are constantly seeking to undermine our national interests. We know Americans distrust government to have all the answers and solutions.

President Obama will, by the time he leaves office, have created a nation where more than ever before the people have turned on each other, the police have turned on the public and the public on the police, the military lacks confidence, the poor have given up, the government has failed at its basic tasks, the bureaucracy has become a politicized weapon deployable against crimes, and the elite have turned in managing and profiting from decline.

The first task of any Republican presidential candidates must be to convince the American people that they, not government, control their destiny. The candidate must, in order to do that, really believe that our best days are ahead of us and not just say

it because he is running for president.

The American people are grown-ups. The Republican electorate are grown-ups. It is time for Republican presidential candidates to stop trying to do their best imitation of Ronald Reagan and instead actually show us who they authentically are. Who is the optimist? Who is the leader? Who can paint the picture of the better tomorrow? Who can bring back hope?

The answers to those questions are not found in policy prescriptions. Not are the answers found in heating up the president. The answers are found in their vision, in their demeanor, in their quiet confidence, in their eyes and in their smile. Polling suggests the public believes again there are better days ahead. Now we need someone to convince us they know what those better days look like and have the path to get there. The public needs someone to show them the way to those better days, not just give a fancy speech surrounded by Democratic columns.

Every year my website, Red State.com, holds an annual gathering. This coming August it will be in Atlanta, Georgia. I hope to get as many of the 2016 Republican field as I can to come show us their vision for America with 2020 fore sight. The multi-point plans will be on hand if the Republican nominee cannot convey that he cares. We need to find that happy warrior



MO

REGIONAL BRIEFS

Electrocute coal miner

BEALLSVILLE — A coal miner who was electrocuted early last week by the Century Mine's electric cable escaped injury, according to Broadwell, a spokeswoman for the mine. The accident occurred on Monday.

According to the County Jail, the man was transported to the hospital just before 2 a.m. Monday. The accident was not available as it is an ongoing investigation.

Trail group meet Jan. 14

WHEELING — The Ohio Valley Trail P will meet at 11 a.m. Jan. 14, at Greenway Wheeling.

Topics will include local information on Actonville Bridge, updates for Ohio, Ill. and Indiana counties, other related topics.

Church to hold concert Friday

MOUNDSVILLE — A concert featuring the Ohio Quartet and The will be held at 7 p.m. on Friday at Cornerstone Church of God, First Street and Poplar Avenue.

The public is invited. A free will contribution will be taken. For all information call 845-7743 or 304-846133.

Network to launch

EXHIBIT 42

West Virginia

The Virginian
Telegram

Sunday, January 11, 2015

Ohio Co. deputy, wife work together to lose weight

Officer's career crippling obesity pointed the couple toward healthier lifestyle change

In Front Center
THE VIRGINIAN-TELEGRAM
WHEELING NEWS RELEASES

WHEELING — Chester and Heather Blair have extra curves. Fresh fruits and vegetables in the past year than they did in the previous 11 years they have been together.

A radical lifestyle change including calorie-conscious eating and daily workouts at the gym — have transformed the couple's looks and lives.

Chester, 41, an Ohio County deputy, "I had, I had dropped 110 lbs. body weight, going from 320 to 210 pounds in 11 months. Heather, 38, has dropped 100 lbs. They lost 100 and 110 pounds, respectively.

The extra weight had seriously crippled Chester's law enforcement career and limited his wardrobe options. "I got passed over twice because I could not pass the mandatory physical aptitude test," he said. "I also got tired of shopping in the big and tall sections of the clothing stores."

Chester's obesity presented more problems in his life than climbing and agility in September 2003, he learned his body mass readings were more than 300.

"Even after being diagnosed with diabetes, I did not want to," he said. "I was on two medications when my insurance coverage changed and I learned it would not cover my prescriptions. I decided at that time that I was not going to pay for medicine if there was any other means to treat it."

He soon learned that diabetes can be treated and even cured with healthy eating and a consistent exercise plan.

"We need to go the gym and workout, then go to the pizza shop and pig out," he said. "Now we work at being healthy."

He no longer has diabetes and he takes no pre-



Chester and Heather Blair pose for a photo after their combined weight loss of almost 200 pounds.

scription drugs.

Heather, who joined the weight loss effort a few months after her husband, said she talked to a dietitian. "She said we needed a lifestyle change, not a diet," she said.

The couple watched their weight loss over the 11 years since they married, so they became their own support group.

"We put it on together," Heather Blair said. "And, we took it off together. I got a new husband without getting a divorce."

Chester credits much of their success to a cookbook app called "My Fitness Pal." It has the tools to keep a diary of daily calorie intake and exercise.

The diet plan of Chester and Heather's lifestyle change allows them to eat much of the same foods as they did before, but in smaller portions.

See WEIGHT, D3

State tax reform remains hot topic

Subject pre-dates West Virginia's statehood

By George Helms
1/10/15, 10:00 AM

CHARLESTON — Tax reform has been a hot topic in West Virginia for 166 years. In his book, "The West Virginia Constitution: A Reference Guide," Robert Heston pointed out that citizens in the western counties were upset because the Virginia Constitution of 1851 taxed real estate and livestock in the Tobacco Basin at a fraction of the value of similar property in the east.

A 50-page history of state tax reform efforts is included in then-Gov. Joe Manchin's 2014 Tax Modernization Project report.

Recent efforts date back to 1888, when then-Gov. Cecil Underwood appointed a Commission on Fair Taxation.

The commission conducted what, at the time, was the broadest pre-reform review of the state's tax structure in West Virginia's history.

Manchin's 2014 report, after a 3 1/2-year effort, the commission made numerous recommendations, including elimination of the personal property tax, replacement of many of the state's business taxes with a single broad-based tax and the elimination of most sales tax exemptions.

Although the commission had Underwood's support and Commission Chairman Robin Caphart championed the state speaking about tax reform, the effort yielded no immediate results.

Looking back on the effort in 2012, Caphart said, "If I made one mistake, it was that we didn't take reform, reduce it to a bill and find sponsors to put it on the legislative agenda. (Yet) you put proposals in bills, nothing is going to change."

Manchin took up tax reform in 2013 by appointing leading state financial executives and academics to a Tax Modernization Project.

The project's report said the Underwood commission had "identified several problems" and "in so doing, even without implementation, helped to frame a number of issues" and continued the long debate "that alone is an accomplishment."



Charleston, from left: Sen. Earl Ray Tomblin, 1st, and Cabinet Secretary Bob Glaze. Former Sen. Underwood, Commission Chairman Robin Caphart.



Manchin subsequently proposed an amendment to the state constitution that would have allowed the Legislature to exempt business machinery and equipment from the personal property tax. The amendment would have left it up to the Legislature to decide how local governments would make up lost revenue.

A gradual reduction in the corporate net income tax rate began in 2005. In 2008, the Legislature began scaling back the business tax, which was eliminated as of Jan. 1.

Caphart revisited outstanding issues in 2012 with "Real Tax Reform for West Virginia," a compilation of his reforms on the subject that were published by The State Journal in 2008 and 2010.

Manchin recommended the Tax Modernization Project in 2013. Members decided to focus on two issues: How to reduce or eliminate the property tax on business machinery and equipment, and

How to shore up the State Road Fund. Manchin subsequently proposed an amendment to the state constitution that would have allowed the Legislature to exempt business machinery and equipment from the personal property tax. The amendment would have left it up to the Legislature to decide how local governments would make up lost revenue.

At the time, the property tax on business machinery and equipment raised about \$150 million a year.

See TAX TALK, D3

Overdose drug Naloxone dubbed 'double-edged sword'

In Lead Item
THE STATE JOURNAL

CHARLESTON — West Virginia has the highest drug overdose death rate in the nation, and it's one of 23 states that does not allow first-responders to administer Naloxone, a life-saving drug that can reverse the deadly effects of heroin and prescription drugs.

Supporters say they'll try to change that by re-introducing legislation to allow the drug once the Legislature reconvenes for the 2015 regular session.

Lacking full support, the bill, which has been introduced several times in the past few years, would aim to prevent deaths by

accidental "overdose by requiring prescribers to offer a prescription of the medication Naloxone to patients for whom opioids are prescribed and by requiring that information and education on Naloxone's beneficial and proper use be made available or provided to patients, family members and caregivers of addicts."

"It saves lives, it works. It's been documented on a national level that we should have it," said Sen. Mac Stollings, D-Berkeley, who sponsored a Naloxone bill in the 2011 session.

The measure passed the Senate only to remain in the House Judiciary Committee — where it would stay until the end of the session. The

House also stripped a companion "good Samaritan" bill Stollings championed last year of its protections for people who call 911 to report drug overdoses.

"Those bills should not have failed last year," said Stollings, a physician. "I haven't been more upset or disappointed than I was this session when those two bills died."

"We started out talking about prescription drugs, but heroin has made a huge comeback in West Virginia, and now that it is back, it adds even more urgency."

How It Works Naloxone is an "opioid antagonist" that can counter the effects of an overdose of heroin, morphine or other

prescription drugs. It's administered in time and if the overdose victim has fallen up care. If only works if a person has an opioid in his or her system, and it has no potential for abuse.

"The antidote works," Stollings said. "It's dramatic, but it's short-acting. Simply giving someone an injection or giving it to them (orally usually isn't) enough, you do have to get them help."

"It will wear off after a while, and if they have a long-lasting opioid in their system, the effects will come back. It's not just getting them the shot or nasal delivery — it's about getting them help."

See OVERDOSE, D3

Poca couple hopes gym works out

By Sharon Tomlinson
THE STATE JOURNAL

In the summer of 2012 Katie Ferrell and Justin Smith met at a General Store Cigars store in Charleston where Katie worked.

Katie says Justin was a regular customer but she was too nervous to talk to him. They finally connected on Facebook and went on a date in December 2012.

"And then we got married," Justin laughed.

Katie, 33, and Justin, 30, 24, wed on Aug. 10, 2013, after a short engagement. Today, they are Putnam County's newest business owners.



Katie and Justin Smith opened a gym in Poca on their first day.

JOE R. PYLE
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EXHIBIT 43

EXHIBIT 44

Obituaries

Telegram

Saturday, January 31, 2015

ries Ray Elder

CHARLES Charles Ray Elder, 84, of Clarksville, died at 10:30 a.m. Saturday, Jan. 31, 2015, at the Clarksville Medical Center. He was born Jan. 1, 1931, in Clarksville, the son of James and Mary (Elder) Elder. He was a member of the Clarksville Baptist Church. He was a graduate of Clarksville High School and served in the U.S. Navy. He worked for the U.S. Navy Medical Center, Department of Veterans Affairs, after 30 years of service. He was a member of the Bridgeport American Legion and had attended Bridgeport Baptist Church. Family requests that donations be made in Charles Elder's memory to the Parkinson's Disease Foundation, 225 Broadway, Suite 1000, New York, NY 10038. Private services for Mr. Elder will be held at a later date by the family.

Interment in his parents' graves is provided in faith by a



DAVID ALLEN OLIVIERO
Age 48, of Harrison, died at 10:30 a.m. Saturday, Jan. 31, 2015, at the Harrison Medical Center. He was born Jan. 1, 1967, in Harrison, the son of James and Mary (Elder) Elder. He was a member of the Harrison Baptist Church. He was a graduate of Harrison High School and served in the U.S. Navy. He worked for the Harrison Medical Center, Department of Veterans Affairs, after 30 years of service. He was a member of the Bridgeport American Legion and had attended Bridgeport Baptist Church. Family requests that donations be made in Charles Elder's memory to the Parkinson's Disease Foundation, 225 Broadway, Suite 1000, New York, NY 10038. Private services for Mr. Elder will be held at a later date by the family.

MARY ELIZABETH GUNTER
Memorial Service
at 11 a.m. Sunday, Feb. 1, 2015, at the Harrison Medical Center.

DAVID LEE "DJ" CROCK, JR.
HANNA CATHERINE CROCK
JOSHUA
DAVID CROCK
Gathering of Family and Friends
at 11 a.m. Sunday, Feb. 1, 2015, at the Harrison Medical Center.

GERTRUDE FAYE "Gertie" FOGG
Visitation
at 11 a.m. Sunday, Feb. 1, 2015, at the Harrison Medical Center.

AMY MARIE ASHLEY
Visitation
at 11 a.m. Sunday, Feb. 1, 2015, at the Harrison Medical Center.

brother, Paul Allen Elder.

Charles was a graduate of Bridgeport High School and served in the U.S. Navy. He worked for the U.S. Navy Medical Center, Department of Veterans Affairs, after 30 years of service. He was a member of the Bridgeport American Legion and had attended Bridgeport Baptist Church. Family requests that donations be made in Charles Elder's memory to the Parkinson's Disease Foundation, 225 Broadway, Suite 1000, New York, NY 10038. Private services for Mr. Elder will be held at a later date by the family.

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Jaunita J. (Lewis) Hawkins

CLARKSBURG Jaunita J. (Lewis) Hawkins, 84, of Clarksville, died at 10:30 a.m. Saturday, Jan. 31, 2015, at the Clarksville Medical Center. She was born Jan. 1, 1931, in Clarksville, the daughter of James and Mary (Elder) Elder. She was a member of the Clarksville Baptist Church. She was a graduate of Clarksville High School and served in the U.S. Navy. She worked for the Clarksville Medical Center, Department of Veterans Affairs, after 30 years of service. She was a member of the Bridgeport American Legion and had attended Bridgeport Baptist Church. Family requests that donations be made in Charles Elder's memory to the Parkinson's Disease Foundation, 225 Broadway, Suite 1000, New York, NY 10038. Private services for Mr. Elder will be held at a later date by the family.

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MEMORIAM
IN LOVING MEMORY OF
JOSEPH BELCASTRO
Jan. 31, 1931 - Jan. 2, 2014



We know you didn't want to leave us Jan. 2nd, 2014, and we don't want you to go, but we will love you the rest of our lives. Your goodness & kindness will live with us forever. Our memories will never die & you are always on our minds. You were the best husband, father & Papa. Anyone could ever have. We know you are in a beautiful place in Heaven & God is loving you. Happy Birthday Joe! Your Wife Clara & Family

WE ARE LOCALLY OWNED AND OPERATED
Harrison County's Only
Dialysis Center
at Davis Funeral Home

DAVIS
Funeral Home

JAUNITA J. (LEWIS) HAWKINS
Visitation
at 11 a.m. Sunday, Feb. 1, 2015, at the Harrison Medical Center.

han Chicago and worked for Nabisco until retirement. After the death of her husband, she has resided between her children in Joliet, Illinois, and Vineland, NJ.

She is survived by a son, Carl R. (Dolly) Hawkins of Joliet, Illinois, and a daughter, Carolyn M. (Dorell) Perry of Vineland, NJ, one sister, Kathryn Gillis of Joliet, IL, 2 grandchildren, Carl J. (Sherry) Hawkins, David W. (Becky) Hawkins, Kevin (John) Walhof, Michelle J. (Perry) Carabina, Vicki L. (Grady) Massie, Jamie L. (Perry) Dorell L. (Melanie) Perry III, nine great grandchildren, Bryce, Jessica, Kiara, Hadley, Daise, Gage, Gavin, Olivia and Alexis and several nieces and nephews.

She was preceded in death by her husband of 52 years, Carl S. Hawkins, one son, James William Hawkins, two brothers, Joseph Lewis and Homer Lewis, and one sister, Frances Allen.

Family will receive friends at the Davis Funeral Home, 111 W. 1st St., Clarksville, on Monday, February 2, 2015, from noon 2 p.m. Funeral services will be held at 2 p.m. Monday, February 2, 2015, in the Davis Funeral Home Chapel with the Reverend Les Benedum officiating. Interment will follow in the Stonevale Park Cemetery.

Condolences may be sent to the family at www.davisfuneralhome.com.

Davis Funeral Home is honored to serve the Hawkins family.

Florence E. Kerns

CLARKSBURG - Florence E. Kerns, age 85, of Sutter Fort, WV, resident of Clarksville Nursing and Rehabilitation, passed away on Wednesday, January 31, 2015, at the Sutter Fort.

The Davis-Weaver Funeral Home is honored to serve the Kerns family during this time.

Perine Funeral Home
TIMOTHY D. SNYDER, SR.
Visitation
2:00 - 4:00 pm Sunday
Perine Funeral Home
Service
11:00 am Monday
Perine Funeral Home
Interment
Shinnston
Masonic Cemetery

304-592-5925
www.perinefunerals.com
Rt. 19 S. Shinnston
Timothy E. Perine
Owner/ Licensed Director
Adam T. Perine
Licensed Director
Family Owned & Operated

Davis Funeral Home
Celebrating 70 Years
of Christian Service

day, January 31, 2015, at the United Hospital Center in Bridgeport.

She was born on July 4, 1929, in Clarksville, a daughter of the late Haywood and Mary Blackwell Campbell.

Surviving are three children, Carl E. Hayes Jr. of Stonewood, Glenda Mae of Sutter Fort and Peggy Bowen and husband Ricky of Salem, nine grandchildren, Cathy Imperial (John), David Mize (Kelly), Stephanie (Lela) (John) Zachary Bowen, Olivia (Loren) Elizabeth Bowen, Sam Jackson, Aaron Jackson and Shawn (Mayer), and seven great grandchildren. Also surviving are several nieces and nephews.

In addition to her parents, Florence was preceded in death by her husband, John G. Kerns, two brothers, John and William Campbell, three sisters, Wanda Netzer, Ruth Wilmoth and Martha Skinner, and one son in law, Rollie Mize.

Florence retired after 38 1/2 years of service with Hazel Atlas, CCC, Anchor Hocking and Newell Glass Companies. She enjoyed country music and taking bus tours to see shows and sightsee. Florence loved her family and especially her grandchildren. She was a wonderful mother, grandmother and friend.

The family will receive friends at the Davis-Weaver Funeral Home, 329 E. Main Street, Clarksville, WV, on Saturday, January 31, 2015, from 9 a.m. until the funeral hour at 1 p.m. Funeral services will be conducted on Saturday, January 31, 2015, at 1 p.m. at the funeral home with Rev. Johnnie Cole presiding. Interment will follow at Floral Hills Memorial Gardens.

The Davis-Weaver Funeral Home is honored to serve the Kerns family during this time.

Rod McKuen dies at age 81

by Matt Hable
THE ASSOCIATED PRESS

NEW YORK — Rod McKuen, the husky-voiced "King of Kitsch" whose avalanche of music, verse and spoken-word recordings in the 1960s and '70s overwhelmed critical mockery and made him an Oscar-nominated songwriter and one of the best-selling poets in history, has died. He was 81.

McKuen died Thursday morning at a rehabilitation center in Beverly Hills, California, where he had been treated for pneumonia and had been ill for several weeks and was unable to digest food, his half brother Edward McKuen Hable said.

Until his sabbatical in 1961, McKuen was an astonishingly successful and prolific force in popular culture, turning out hundreds of songs, poems and records. Sentimental, earnest and unashamed, he conjured a New Age spirit world that captivated those who didn't ordinarily like "poetry" and those who craved relief from the war, assassinations and riots of the time.

"I think it's a reaction people are having against so much insanity in the world," he once

Task force probes result in 41 total arrests in 2014

From Staff Reports

BRIDGEPORT Forty-one individuals were arrested in 2014 as a result of Greater Harrison Drug and Violent Crimes Task Force investigations, according to the office of U.S. Attorney William J. Ihlenfeld II.

Sixteen arrests were for prescription pill trafficking, 10 for heroin, five for methamphetamine, four for bath salts, three for crack cocaine, two for marijuana and one for fraudulent prescriptions, according to Ihlenfeld's office.

Additionally, investigations by the task force led to sentencing of 36 individuals to a total of nearly 120 years — an average of 3.6 years per defendant — in 2014, according to Ihlenfeld's office.

Notable cases included the arrest, guilty plea and sentencing of Harrison County Sheriff's Department process server Jason Marple, the arrest and guilty plea of Mario Mount, who was mayor of Bridgeport at the time, as well as a pharmacist for a painkiller prescription/distribution conspiracy, and "no contest" pleas by Dr. Edna Milan in a case in which she's accused of operating a painkiller distribution ring from her Bridgeport clinic.

Bridgeport Police Chief John Walker, who leads over 200 officers assigned to it, noted the impact drug addiction has had on quality of life.

"We are extremely fortunate to have proactive law enforcement officers who understand the problems and dangers that drugs bring to our communities," Walker said. "It is important for the residents of our communities to know that together we can make a difference."

The task force's tip line is (304) 709-7764, or tips can be sent by email to chdtdt@gmail.com.



Walker

ence, and we value their input. The officers serving on the Greater Harrison Drug and Violent Crimes Task Force are in the community, and we value their input. The officers serving on the Greater Harrison Drug and Violent Crimes Task Force are in the community, and we value their input.

Clarksville Police Chief Robert L. "Bolder" Hilliard also has officers on the unit and helps oversee it.

"Area law enforcement and the task force have a responsibility to keep the community safe. This is our community, too," Hilliard said. "We take it personally when illegal activity threatens the safety and well-being of the citizens in this area. The cooperative effort of coming together and working together in our community of illegal drugs has proven successful over and over again."

The Greater Harrison County Drug and Violent Crimes Task Force is composed of representatives from the U.S. Attorney's Office, the Drug Enforcement Administration, the West Virginia State Police, the United States Marshals Service, the United States Postal Inspection Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Internal Revenue Service-CI, the Clarksville Police Department and the Bridgeport Police Department, according to Ihlenfeld's office.

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One man hurt after rolling his truck on Interstate 79

ANMOORE — One man was taken to the hospital after rolling his truck on Interstate 79 Friday morning, according to the Harrison County Sheriff's Department.

Matthew Bennett was driving a 2007 Chevrolet Silverado on I-79 near Anmoore about 6:47 a.m. when he traveled into the median and rolled the vehicle, Harrison County Sheriff's Office said.

LOCAL STATE

alternative sentence. The defendant, who will be required to pay restitution, could face 1-10 years in prison in the case investigated by Bridgeport Officer J. Frenzel. In another case, a defendant

EXHIBIT 45

The Enterprise
Telegram

Local, State

Wednesday, February 11, 2015 A3

Feds tackle drug cases in Harrison, Randolph

by Matt Harvey
ASSISTANT MANAGING EDITOR

CLARKSBURG — A Michigan defendant in a Harrison County drug case was sentenced to about 12 1/2 years in prison on Tuesday by U.S. District Judge Irene M. Keeley.

In a separate case, meanwhile, a Florida man pleaded guilty to being involved in a six-year marijuana conspiracy in Randolph County.

In the Harrison County matter, Stanley "Smooth" Dye Jr., 32, of Detroit, previously had pleaded guilty to possession with intent to distribute oxycodone.

He also must serve 3 years on supervised release once he completes his incarceration, Keeley ruled in the hearing in U.S. District Court in Clarksburg. Dye gets credit for a year and about 2 months he served pending prosecution.

The Greater Harrison Drug and Violent Crimes Task Force investigated, making multiple controlled purchases of oxycodone from a residence on Blane Street in East View.

Agents seized oxycodone, guns and thousands of dollars in currency when they raided the dwelling on Dec. 19, 2013.

The Drug Task Force alleged Dye brought drugs

from Michigan through Ohio and then into the Clarksburg area for distribution by other defendants in the case. The investigation resulted in multiple convictions, including of two other Detroit residents.

Assistant U.S. Attorney Shawn Morgan represented the government, while Dye's lawyer was Roger D. Curry of Fairmont.

In the Randolph County case, Arthur Woodrow Pritt Jr., 37, of Archer, in Florida's Alachua County, pleaded guilty to the marijuana conspiracy lasting from Dec. 18, 2008, to last Dec. 16.

Pritt stipulated that proceeds from his conviction were around \$110,000, and agreed to a forfeiture money judgment of that amount. Assistant U.S. Attorney Stephen Warner, defense lawyer Scott Shough and Pritt also reached an agreement that the defendant's total relevant drug conduct was at least 40 kilograms, but less than 60 kilograms.

Pritt's plea hearing was conducted by U.S. Magistrate John S. Kaull in Elkins. Pritt



Judge Keeley

will be sentenced at a later date by Chief U.S. District Judge John Preston Bailey.

The U.S. Forest Service, IRS and Drug Enforcement Administration investigated.

Also, ■ Three individuals have pleaded guilty in a case in which the office of U.S. Attorney William J. Ihlenfeld II has alleged oxycodone was obtained in Detroit, New Jersey and Florida for redistribution in Northern West Virginia.

Entering pleas in Elkins on Tuesday before Magistrate Kaull were Stevie Lea Sharp, also known as Stevie Shreve, 27, of Coalton, Matthew Lee Cordero, 31, of Vineland, New Jersey, and Gregory Stephen Scott, 34, of Beverly.

Scott and Sharp pleaded guilty to aiding and abetting distribution of oxycodone June 6, 2013, in Randolph County.

Cordero pleaded guilty to distribution of oxycodone Oct. 17 in Elkins.

Scott, represented by Federal Defender Brian Kornbreith, stipulated to total relevant drug conduct of at least 100 kilograms marijuana equivalent, but not more than 400 kilograms.

Cordero, represented by attorney Scott Curnutte, stipulated total relevant drug

conduct of not more than 60 kilograms of marijuana equivalent.

And Sharp, represented by attorney Harry A. Smith, stipulated in total relevant drug conduct of at least 10 kilograms of marijuana equivalent, but less than 20 kilograms.

The fourth and final defendant, Jonathan Paul Calain, 34, of Elkins, is scheduled for a plea hearing.

Warner represented the government. The Mountain Region Drug and Violent Crimes Task Force, State Police, the Randolph and Upshur sheriff's departments, the Drug Enforcement Administration and the IRS investigated.

Chief Judge Bailey will preside over the sentencing hearings.

■ Richard McNemar, 45, has lost another challenge of his imprisonment on Harrison County convictions for first-degree sexual abuse and sexual abuse by a parent, guardian, custodian or person in a position of trust.

McNemar was convicted by a jury in July 2008 and was sentenced to 10-20 years in prison that same year.

McNemar's initial legal challenge was rejected July 1, 2010, by Harrison Circuit Judge James A. Matish.

In the second challenge, filed recently, McNemar had asserted the lawyer he had in the first challenge was ineffective.

After reviewing the proceedings of the first challenge and considering applicable standards of law, Matish ruled that McNemar is eligible for no relief.

The defendant is proposed to discharge his sentence July 21, 2015, via day-for-day good time credit. That's also the same day he first would be eligible for parole.

McNemar, held at the Huttonville Correctional Center, will have to register as a sex offender for life once he's released.

■ Tina Elana Stout, 24, of Shinnston, has been placed on probation for 3 years by Harrison Circuit Judge John Lewis Marks Jr. according to Assistant Prosecutor Laura Pickens.

Stout previously had pleaded guilty to conspiracy to commit delivery of heroin in a case investigated by the Harrison County Street Crime and Drug unit.

■ Cameron Michael Dean



McNemar

has pleaded guilty before Kaull in Elkins to distribution of oxycodone May 20 in Lewis County.

Represented by Assistant Defender Kati Cornette, Dean will be sentenced at a later date by Chief Judge Bailey.

■ William Ray Justice has pleaded guilty before Kaull in Elkins to distribution of oxycodone Jan. 19, 2014, in Western Justice also represented in Cornette, will be sentenced later by Bailey.

■ Melinda Kellen Means, 37, of Clarksburg, has waived her probation case hearing before Harrison Magistrate Warren "Gunny" Davis.

The waiver would allow court the charge of being a third-offense weapons offender lodged against Means by Clarksburg Officer T. Vincent.

Means was pulled from Walmart in early December. Vincent has charged.

■ Longtime area defense attorney Greta Davis is closing her practice according to a filing in Harrison County Circuit Court in which she asks off one of her cases.

Davis and her family are relocating to another state according to the filing.

Davis was an assistant defender for the county for several years before opening a private practice.

W.Va., Mississippi strictest on school immunizations

Neither allows



exemption was stripped from

The protection of students want to keep the law as it is.

EXHIBIT 46

Friday, January 30, 2015

Today's Weather



Snow showers/28

See Page A19



The Exponent Telegraph

The Independent Voice of North Central West Virginia

75¢

75¢

INSIDE

LOCAL



The Harrison County Commission approved the annexation of over 200 acres of property for Clarkburg.

Page A4

SPORTS



The RCB boys basketball team routed Gratton, 75-46, Thursday night at home.

Page B1

Bridgeport hosts meeting to address drug abuse problem

U.S. Attorney Ihlenfeld makes keynote speech on helping young people with addiction

by Brittany Murray
STAFF WRITER

BRIDGEPORT — Local residents gathered at Bridgeport High School Thursday evening for a town hall meeting to discuss drug abuse and overdoses in their communities and the state of West Virginia.

"It's somewhat symbolic

that we're here at a high school, because so much of what we hope to accomplish tonight and going forward is helping our young people," said keynote speaker William Ihlenfeld II, U.S. attorney for the Northern District of West Virginia.

Heroin and opioid abuse is a public health crisis, Ihlenfeld said.

During his presentation, Ihlenfeld stated that over 8,000 people in the U.S. died in 2013 from heroin overdoses — a 39 percent



Ihlenfeld

increase from 2012.

"We have not yet hit the peak of the problem," Ihlenfeld said. "We're still going up, and it hasn't flattened out and we haven't started to come back down the other side."

In 2013, about 750,000 people in the U.S. reported using heroin, Ihlenfeld said.

"That's a staggering num-

ber," he said.

Bridgeport High School graduate Brianna Stogran has dealt firsthand with the struggle of drug addiction and abuse.

In 2014, Stogran was arrested for possessing heroin, and later attended a treatment facility in North Carolina.

See ISSUES, A3



Election law change sought in potential Manchin bid

EXHIBIT 47

In WV, Obama talks prevention, treatment to fight opioid epidemic

Gutman, David . TCA Regional News ; Chicago [Chicago]21 Oct 2015.

[ProQuest document link](#)

ABSTRACT

Obama came to Charleston to talk about opioids, including heroin and prescription painkillers, and ways to deal with the epidemic of drug abuse across West Virginia and the rest of the nation. Obama spoke at the East End Family Resource Center, in a small gymnasium, with hand-painted backboards, to an invited audience of health and law enforcement professionals, families affected by substance abuse and Democratic lawmakers and other officials.

FULL TEXT

Oct. 21--As President Barack Obama sat in a small community center gym on Charleston's East End on Wednesday, Cary Dixon told him what opioid addiction has meant to her family.

"We dread the next phone call," said Dixon, whose son is in jail, battling his addiction. "We neglect our marriages. We neglect other children in our homes, who are thriving, because all our attention is focused on addiction and substance abuse. We rest better at night when our loved ones are incarcerated."

Dixon, of Huntington, leads a support group for parents with children battling addiction.

Obama said her story made him think of his own daughters.

"They're wonderful girls, but they're teenagers. They do some," Obama paused, "things."

Obama referenced his book, in which he wrote about his drug use as a young man.

"I did some," again Obama paused for emphasis, "stuff."

"What I think about is, 'There but for the grace of God . . .'" the president said.

Obama came to Charleston to talk about opioids, including heroin and prescription painkillers, and ways to deal with the epidemic of drug abuse across West Virginia and the rest of the nation.

The president led the discussion that was focused on the scale and the possible solutions to the nation's opioid epidemic, which took off in the mid-1990s and has grown rapidly since then.

He said that, in contrast to a previous tough-on-crime mindset, officials need to focus on strategies to reduce the

demand side of the problem – prevention and treatment.

"This is an illness, and we have to treat it as such," Obama said, to applause. "For a long time, I think, treatment was seen as a second-class citizen to interdiction and arrest."

The administration is not backing off on aggressive law enforcement, Obama said, just that, for far too long, prevention and treatment have been undervalued.

He talked about how addiction affects people all over the country, of all races and income levels.

"This is happening to families everywhere, with great parents who love their kids," the president said.

Obama also said, though, that race and income do play a role in making communities more vulnerable, and he touched on the connection between West Virginia's troubled economy and its spot leading the nation in overdose deaths.

"Part of the reason West Virginia probably has more cases partly has to do with the economics that have been taking place in some of these communities, which is why it's so important for us to push on that front, as well," the president said.

There were 259 million prescriptions written for opioid painkillers in 2012, Obama said, more than enough for every adult in America to have their own bottle of pills.

"As their use has increased," he said, "so has the misuse."

More Americans die from drug overdoses than car crashes, Obama said, and most of those overdoses come from legal prescription drugs.

The solution won't come from any one source, he said, talking about the importance of better training for drug prescribers, while also certifying more doctors to prescribe opioid treatment drugs like Suboxone and expanding the use of naloxone to save the lives of people who overdose.

"We've all got a role to play," the president said. "These are our kids. It's not somebody else's kids, it's our kids; it's not somebody else's neighborhood, it's our neighborhood."

In response to a question about the dearth of opioid treatment options in West Virginia, Obama pointed to his 2016 budget – which has no chance of being passed by Congress. Obama's budget has more than \$100 million in new money for overdose prevention programs and expanding medically assisted treatment programs.

He noted that the Affordable Care Act requires insurance plans to include coverage for substance abuse treatment, the same way they do for diabetes or heart disease.

The president pointed to America's success in battling smoking as an example of how the nation can battle the opioid epidemic – on multiple points of attack.

The adult smoking rate has consistently declined, from about 40 percent of the population in 1965 to less than 20 percent today. The youth smoking rate has plummeted in the past 15 years, from about 35 percent to 18 percent.

"Nicotine is as addictive as any of the drugs we're talking about," Obama said. "There's no reason we can't do it here, as well."

Even though cigarettes have never been outlawed, he said that, through improved education, more difficult access, restrictions on tobacco advertising and cutting tobacco industry profits, the country has achieved big results.

Obama spoke at the East End Family Resource Center, in a small gymnasium, with hand-painted backboards, to an invited audience of health and law enforcement professionals, families affected by substance abuse and Democratic lawmakers and other officials.

Joining the president and Dixon on stage were U.S. Health and Human Services Secretary Sylvia Mathews Burwell, White House director of national drug control policy Michael Botticelli, Charleston Police Chief Brent Webster and Dr. Michael Brumage, director of the Kanawha-Charleston Health Department.

Obama said he was impressed with Charleston's Handle with Care program, described by Webster, in which police officers at violent crime scenes take the name of children present and then notify the child's school so they can receive special attention or counseling the next day.

The president said he'd like to see that program advertised more around the country.

"Most people probably look at the person in the uniform and think this is the guy who's going to tell me 'more jails,' and that's not me," Webster said.

"This is such an epidemic, and you cannot arrest your way out of this mess," the chief said to huge applause.

Obama noted that criminal justice reform and battling the opioid epidemic through treatment, rather than incarceration, is one of very few areas where there is bipartisan agreement in Washington.

Gov. Earl Ray Tomblin spoke briefly before the president's arrival, touting the steps that West Virginia has taken in the past several years to try to stem the flood of opioid abuse -- increasing community based treatment and treatment in state prisons, shutting down 11 "pill mills" and expanding access to naloxone, which reverses the effects of an overdose.

"Each of us has experienced this heartbreaking epidemic, in one way or another," said Tomblin, whose brother has struggled with opioid addiction. "It can affect the richest of the rich or the poorest of the poor."

During his trip to Charleston, Obama announced two new federal policies intended to help deal with the overabundance of prescription opioids and the dearth of available treatment for opioid abuse.

The president will require federal agencies to provide training, specifically on the prescription of opioids, to doctors and nurses who work for the federal government.

While heroin use has skyrocketed in recent years, it's still a problem that starts with legal drugs found in medicine cabinets.

Four out of five new heroin users started by abusing prescription medications, Obama said.

"Much of the morbidity and the mortality associated with prescription drug and heroin abuse correlates to over-prescribing of painkillers in the United States," Botticelli said.

Federal agencies also will have to examine the health insurance plans they offer, to make sure there are no barriers that prevent people suffering from opioid abuse from accessing medically assisted treatment like Suboxone.

Botticelli said the government is using federal grants to make sure local drug court programs are offering medically assisted treatment.

Both the changes affect only federal employees and agencies, so they will not have widespread effects, but like Obama's visit, they're intended to provide an example and shine a spotlight on the opioid epidemic.

"This is something that is not a top-down-solution type of problem alone," Obama said. "This is going to have to be everybody working together

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Credit: The Charleston Gazette, W.Va.

DETAILS

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EXHIBIT 48

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: OPIOID LITIGATION.,

Civil Action No. 19-C-9000

MASS LITIGATION PANEL

**Alan D. Moats - Lead Presiding Judge
Derek C. Swope - Presiding Judge
Joanna I. Tabit, Lead Resolution Judge
Jay M. Hoke, Resolution Judge
Debra Scudiere, Resolution Judge**

HEARING

BEFORE: The Honorable Alan D. Moats, Lead Presiding Judge, the Honorable Derek C. Swope, Presiding Judge, the Honorable Joanna I. Tabit, Lead Resolution Judge, the Honorable Jay M. Hoke, Resolution Judge, and the Honorable Debra Scudiere, Resolution Judge, in the Kanawha County Courthouse, Ceremonial Courtroom, Charleston, Kanawha County, West Virginia, at 10:04 a.m., on the 6th day of December, 2019.

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1 P R O C E E D I N G S

2 JUDGE MOATS: Good morning. It is good to
3 see everyone in such a great mood. It is Friday. We
4 have bar from West Virginia and out of state here.

5 I appreciate everybody's hard work that you
6 have done back since September.

7 I know you-all are waiting with bated breath
8 to see what we are going to do today. It depends on
9 how things go.

10 First of all, I want to reintroduce our Mass
11 Litigation Panel.

12 To my left is Judge Jay Hoke. He is from the
13 Lincoln and Boone County Circuit, and he is going to
14 be on the resolution part of the panel.

15 Next to him is our newest member of our Mass
16 Litigation Panel, Judge Debra Scudiere. Judge
17 Scudiere is in Monongalia County, and she took the
18 bench back in --

19 JUDGE SCUDIERE: April Fool's Day.

20 JUDGE MOATS: -- April Fool's Day, she says.
21 She said it. I didn't.

22 Before she took the bench, she was a long
23 time practicing attorney and recognized as one of the
24 foremost mediators in our state.

1 She has been active in every branch of the
2 legal profession and previous State Bar president, and
3 so she is a valuable addition.

4 I assigned her to the resolution side so we
5 can have her mediation skills.

6 Of course, I am Judge Moats. I am the
7 chairman of our mass litigation panel, and I am the
8 Lead Presiding Judge in this case.

9 To my right is Judge Derek Swope from Mercer
10 county, and he is on the trial side, and he has been
11 here a long time.

12 He and I are very closely aligned as far as
13 talking all the time and working closely together in
14 this litigation.

15 To my far right is Judge Joanna Tabit from
16 here in Kanawha County. Judge Tabit is the Lead
17 Presiding Resolution Judge in the case.

18 She has had long time experience in mediating
19 prior to becoming a judge and teaches mediation
20 courses.

21 So ordinarily, I told you before, when we do
22 these cases, normally we have an initial status with
23 all five or six or however many of the judges that we
24 have assigned to the case that are going to be

1 involved, and then after that first hearing we
2 normally don't get back together as a whole panel with
3 the two sides.

4 Now this time it is going to be different.
5 Until we actually begin the resolution phase, we are
6 going to continue to meet together because we believe
7 it is critically important in a case of this magnitude
8 and complexity that the resolution judges have full
9 understanding of what is happening, what has happened
10 to give them the extra tools and insight in this as
11 they go forward.

12 So that is why we are continuing to do this
13 in this manner.

14 Then once they start attempting to resolve
15 the case, then we will no longer be meeting and
16 working together.

17 Now as far as what we are going to do here
18 today, a few days ago I signed an order to extend some
19 deadlines pertaining to motions to dismiss.

20 I set some deadlines for the defendants for
21 the day after Christmas, and now yesterday some of the
22 defendants filed motions asking for an extension, and
23 they were quite kind in the way they did it.

24 They talked about the necessity of all the

1 work for today's hearing and getting ready instead of
2 saying, "Listen, Scrooge, what is wrong with you."

3 I just want you to be honest with me. So I
4 do not want to be called Judge Scrooge. Your motions
5 are granted, and you may have until January -- I think
6 you asked for the 9th, and that is fine.

7 After thinking about it, I was going to do it
8 anyway. I already had it on my schedule to do. I
9 didn't pay much attention, but I went back and looked
10 at it and I saw that I had given you until the 26th.

11 I didn't know if the attorneys here would do
12 it, but I figured some associate would be working here
13 on Christmas Eve and Christmas night and New Year's
14 Eve or whatever, and I didn't want that.

15 So we will enter those orders to extend that
16 time period and Merry Christmas to one and all.

17 MR. MEADOWS: Thank you, Your Honor.

18 JUDGE MOATS: You are welcome.

19 Now in keeping with the holiday season, I
20 hope all of you had a wonderful Thanksgiving. I hope
21 that you didn't have to spend Thanksgiving evening and
22 Thanksgiving and the day after working on this.

23 I did. Judge Swope did. Ms. Fields did, but
24 it didn't stop me from eating Thanksgiving dinner. So

1 don't feel sorry for any of us.

2 When I was eating Thanksgiving dinner, I
3 really enjoyed it. We always have big gatherings,
4 family gatherings, and I love Thanksgiving because it
5 seems to be a lot easier and more family and friends
6 oriented and I eat way too much.

7 So as I was doing that, I recalled back to
8 when I still had my mother growing up. My mother
9 would say, "If you put it on your plate, eat it, and
10 if you don't want it, don't put it on your plate."

11 My grandmother used to tell me and I am sure
12 some of yours did, too, "Your eyes are bigger than
13 your belly."

14 When I was a little kid, I didn't know what
15 she meant by that. I could not relate to that. I
16 soon learned.

17 Now what does that have to do with today?
18 Rule 19. We have read all of your responses, motions,
19 and I recalled back to my mother and my grandmother in
20 eating too much.

21 Looking at Rule 19, I see that there are
22 maybe 251 additional plaintiffs to bring in if we go
23 forward in that manner.

24 This case as I told you at the first hearing

1 is without question the most complex, complicated, and
2 trying matter we have ever dealt with.

3 Judge Polster says the same thing in federal
4 court, and I am sure judges in other states say the
5 same thing.

6 Judge Swope and I talk most every day early
7 in the morning, and we decided we were served an
8 elephant. I said, "How do you eat an elephant?" His
9 answer, "One bite at a time."

10 Well, we decided we are willing and we told
11 you we would eat the elephant that was served us, but
12 we decided we are not going to order a second helping.

13 As a result our rule to show cause in our
14 order to bring in all these other parties is
15 rescinded, and so that is the end of that.

16 We will eat it with what we have in front of
17 us. We will deal with anymore that are filed -- and I
18 don't know if you are aware there were eight more
19 cases filed in the past couple of weeks all dealing
20 with municipalities, and those are in Marshall County.

21 I am sure in good order there will be more
22 and we will deal with those, but we will not be
23 bringing anybody in under Rule 19.

24 So the motion is granted and our order will

1 be rescinded.

2 Now along those lines, however, I told you
3 the reason we were looking at that was to try to have
4 a full and complete resolution in this state to all
5 these matters.

6 We have cases pending in federal court. Some
7 of you-all are in both state court and federal court.

8 We have the huge issue of the federal class
9 settlement negotiating class where all of the towns
10 and counties across this country had until November 22
11 to decide to opt out.

12 We talked about the novelty of that back on
13 September 20th. That has never been done before, but
14 this kind of case has never occurred here.

15 Now a lot of places have decided to opt out.
16 I saw some article yesterday that said that 98 percent
17 of the parties decided not to opt out, but various
18 parties have decided to opt out.

19 We have both attempted to educate ourselves
20 as much as possible as far as what is happening in the
21 federal MBL for our purposes, and we are aware of what
22 Judge Polster is doing, and what he is doing is
23 nothing less than incredible, what he has been under
24 so far.

1 I don't think any of us can understand the
2 extent of the work that he has done over the past
3 couple of years and is still doing.

4 But I found it interesting for him to say
5 what he has done, that the model that was in place is
6 not working and it can't work.

7 So he is going back to the drawing board as
8 he goes forward.

9 We know that he is talking about remanding
10 two cases here in this state, Cabell County and
11 Huntington, back to the Southern District, I assume in
12 Huntington.

13 Under certain terms and conditions, I guess
14 the Plaintiffs are going to have to decide whether
15 they are going to agree. I have no idea other than
16 what was in that order.

17 However, a few months ago, I guess two or
18 three months ago, I had a case where Jack Smith -- is
19 Jack here?

20 He is on the Defendants hearing committee. I
21 can't remember. I think he said he was representing
22 some entity from California, but he offered to come in
23 and be involved to assist and cooperate in our state
24 case if it would be helpful to any of us.

1 Since then, Paul Farrell Jr., who is one of
2 the lead counsel in the federal case, has offered the
3 same -- has put forth, rather, the same offer to come
4 in and be involved.

5 So we have talked. If you-all are willing,
6 is it possible to attempt to bring before our
7 resolution panel all the cases, not to do anything to
8 usurp anything that is in federal court, but I can't
9 imagine Judge Polster would object to cases settling
10 out. I am sure he would be very happy if that
11 happened.

12 So is it possible for you-all to get together
13 with your federal counterparts and attempt to resolve
14 all of the cases whether they are at the federal level
15 or here at the state level with the entire Mass
16 Litigation Panel process.

17 I would like you to look at that. I would
18 like you to discuss it. Mr. Farrell says he is
19 willing to. I don't know if Jack Smith is on the
20 steering committee. I don't know who the lead
21 attorney is. I am sure you-all do.

22 Please consider that and let us know if you
23 are willing to do that. If you would like to have a
24 status conference somehow to maybe lay some

1 groundwork, we certainly are pulling to that.

2 Because this is going to be a process and it
3 is not going to happen overnight.

4 We have various issues that we need to
5 discuss. The last time I raised an issue of statute
6 of limitations. We don't know the answer to this.

7 Where is Mr. Linkous today? Is he here as
8 your liaison?

9 MR. FARMER: Mr. Linkous is unavailable
10 today, Your Honor, the one day on his calendar that he
11 could not make it. He apologizes for his absence, but
12 he has delegated some of us to proceed in his absence.

13 JUDGE MOATS: Well, I have one question to
14 the Plaintiffs. Who is speaking for them?

15 MR. FARMER: Pardon me?

16 JUDGE MOATS: Who is going to speak for
17 them?

18 MR. FARMER: Mr. Fitzsimmons was to speak
19 today on the Rule 19 issue.

20 JUDGE MOATS: Well, he doesn't need to speak
21 to that.

22 MR. FARMER: I am happy -- Steve Farmer --
23 as Co-Lead Counsel to --

24 JUDGE MOATS: Mr. Farmer, I have one

1 question.

2 MR. FARMER: Yes, sir.

3 JUDGE MOATS: How far back do the Plaintiffs
4 believe they can go for damages?

5 MR. FARMER: Back to when this whole thing
6 started, Your Honor.

7 JUDGE MOATS: Which is?

8 MR. FARMER: It started in 1996 with Perdue
9 Pharma in the beginning of the false narrative and the
10 fraud about what these drugs could do and why they
11 should be prescribed.

12 JUDGE MOATS: Okay. So we are going to have
13 to have briefed this whole issue of statute of
14 limitations.

15 So you are going to have to show how you can
16 go back to 1996. We all know it is a two-year statute
17 of limitations normally when you knew or reasonably
18 should have known.

19 So that is going to be the first issue we are
20 going to want to look at better.

21 We are going to want to look at how far in
22 the future do you think you can go. We want that
23 briefed, and we would like to know how long do you
24 think it is going to take you to brief it because I am

1 going to give both sides the same.

2 MR. FARMER: We can brief it in 30 days.

3 JUDGE MOATS: Sure. Mr. Meadows?

4 MR. MEADOWS: Good morning, Your Honor.

5 JUDGE MOATS: Good morning. I assume you
6 disagree with Mr. Farmer's position.

7 MR. MEADOWS: Absolutely, Your Honor.

8 JUDGE MOATS: Okay, so how long do you
9 believe that you need to be able to brief that issue
10 on statute of limitations?

11 MR. MEADOWS: I am going to pivot, if you
12 don't mind, Your Honor, and look at my team.

13 JUDGE MOATS: And I understand we have -- I
14 understand we have two holidays basically for two
15 weeks which makes things very difficult. That is why
16 I gave you some more time.

17 MR. MEADOWS: We believe, Your Honor, that
18 if they were granted 30 days to prepare a brief, we
19 could respond within 30 days of their submission.

20 JUDGE MOATS: All right.

21 JUDGE SWOPE: How far back do you think they
22 can go? He said 1996.

23 MR. MEADOWS: Two years, Your Honor.

24 JUDGE SWOPE: Two years, okay. So we know

1 to plan.

2 JUDGE MOATS: That is all we want to know.
3 We are not going to argue your positions.

4 JUDGE SWOPE: No, no. What have you got?

5 MR. EMCH: Just speaking as Lead Counsel for
6 today, Your Honor -- and first of all, let me thank
7 you for the ruling you ruled.

8 You said in the first hearing -- one of the
9 things you said in the first hearing was you don't
10 like to be told things you can't do.

11 I know you and I know the panel, and I know
12 you understand that there are times when lawyers have
13 to say to the Court, "Your Honors, we don't think we
14 can do this."

15 We appreciate your consideration of that
16 position in this situation, and Your Honor, on our
17 motion and our bringing this to the Court and the
18 ruling you made.

19 That is one thing I wanted to say to you.

20 The second thing on this issue I would simply
21 say Lincoln County v. The American Water Company case,
22 which you decided as far as how far back they could go
23 on the statute of limitations.

24 JUDGE MOATS: I recall.

1 MR. EMCH: And the 30 days, I agree with my
2 colleague, Mr. Meadows, and we usually try to be as
3 concise and consistent as we can on the defense side.

4 It is a very large and diverse group. It
5 does not have a single face and it is difficult to
6 coordinate these things, but we will certainly do our
7 best, Your Honor.

8 JUDGE MOATS: Well, you know what their
9 position is. So you-all can start working on that
10 today.

11 MR. EMCH: Yes, sir.

12 MR. FARMER: Your Honor?

13 JUDGE MOATS: Yes, sir.

14 MR. FARMER: May I address the Court very
15 briefly --

16 JUDGE MOATS: Go ahead.

17 MR. FARMER: -- on the same subject?

18 JUDGE MOATS: Go ahead.

19 MR. FARMER: And that is on behalf of West
20 Virginia's hospitals, I would like the Court to
21 understand that on the motions to dismiss we did not
22 ask for extra time to respond to the motion to
23 dismiss, and the reason is simple.

24 That is our clients, the hospitals, don't

1 have extra time. They are in a critical bind as far
2 as things, and the only thing I want to ask is on this
3 issue of statute of limitations, in an effort to move
4 this thing along, could we have 30 days?

5 We are happy to work through two holidays to
6 get these papers within 30 days, but I think it would
7 be fair and just and appropriate given the subject
8 matter that the briefs be submitted at the same time.

9 There is no reason to have another 30 days
10 for response.

11 JUDGE MOATS: I will agree to that. I will
12 give each of you 60 days.

13 MR. FARMER: But we submit them at the same
14 time?

15 JUDGE MOATS: Yes.

16 MR. FARMER: Thank you, Your Honor.

17 JUDGE MOATS: You are welcome.

18 MR. ARCENEUX: Your Honor?

19 JUDGE SWOPE: Let me say something about
20 that. Go ahead.

21 MR. ARCENEUX: Yes, Your Honor. Jay
22 Arceneaux here on behalf of Rite-Aid.

23 I want to emphasize the point that Mr. Emch
24 made, which is we are diverse defendants, and I know

1 in particular Rite-Aid has been involved in litigation
2 for years, and it has a particular statute of
3 limitations argument that it would like to bring to
4 the Court, and I am aware that other pharmacies have
5 similar issues.

6 Would the Court entertain more than one brief
7 per side?

8 If people have a unique statute of limitations
9 argument, would they be entitled to present it at this
10 time?

11 JUDGE MOATS: I guess it depends on how many
12 we are going to have. If we are going to have -- I
13 don't know how many defendants we have.

14 I know a lot of you are -- there are
15 families, what I call families of defendants. We
16 don't want 20 different briefs.

17 You know, we have limited time, too. Both of
18 us have full dockets. We deal with this at nights, on
19 weekends, on holidays, which brings up we just had
20 motions to dismiss the West Virginia Board of
21 Pharmacy.

22 We had that set for hearing today. We worked
23 hours on that one. That was --

24 JUDGE SWOPE: Over Thanksgiving.

1 JUDGE MOATS: Over Thanksgiving. That is
2 why that I said that I worked on Thanksgiving, all
3 Thanksgiving week.

4 Part of that was spending hours on the Board
5 of Pharmacy motion to dismiss that was withdrawn two
6 days ago.

7 Now we can't do that. That is the epitome of
8 frustration for a case that has been pending for a
9 long time, since January.

10 JUDGE SWOPE: Which somebody dismissed that
11 in February.

12 JUDGE MOATS: In February part of it was
13 dismissed, but yet two days before this hearing after
14 we, two judges and our law clerk and my staff and
15 Judge Swope's staff spends hours and hours working,
16 and it is not left.

17 Well, if we are going to do this and you-all
18 say how critical it is, we can't waste our time. We
19 have to be like lasers focused on a topic. That is
20 the only way this is going to work.

21 So I guess, Mr. Arceneaux, you need to
22 contact Mr. Meadows and he needs to submit something
23 once you can tell us how many briefs you actually
24 need.

1 I cannot tell you and give you an answer
2 today.

3 MR. ARCENEUX: Okay, thank you.

4 JUDGE MOATS: Just do it in due course very
5 shortly.

6 MR. ARCENEUX: We will work with Mr.
7 Meadows. Thank you, Your Honor.

8 JUDGE MOATS: Okay, 60 days for both sides.

9 JUDGE SWOPE: I just want to add to that
10 here, too, if you don't mind.

11 JUDGE MOATS: Go ahead.

12 JUDGE SWOPE: Yesterday -- I guess Mr.
13 Linkous isn't here. Yesterday he had filed or maybe
14 the day before as I was finishing my 30 criminal pre-
15 trials and I actually had an abuse and neglect until
16 6:00 Monday night, I get this thing that says, "Here
17 is our agenda," and there are a thousand pages.

18 Who the hell is going to read that? Sit
19 down. Who is going to read that? Okay, the point
20 that I am trying to make here is brevity is the soul
21 of wit. You know, and when you file things that are
22 just on and on -- if you ask for a hundred pages, we
23 probably got 99.

24 When you ask for that, how about bearing in

1 mind who is reading this. We don't have an army of
2 law clerks. We don't have people to -- we don't have
3 that. You are looking at us right here.

4 So if you want to respect the Court, if you
5 appreciate what we do, how about getting to the point,
6 okay? I am not smart. I am not a law review person,
7 okay.

8 Just send it where the calves can get it, and
9 that is what I am going to read.

10 All right, everybody understand that?

11 So I don't need your law review article. I
12 don't need your theme and thesis. I don't need your
13 Phi Beta Kappa Ph.D. essay pieces.

14 I want you to get to the point on what you
15 want. I don't care what they did in New Hampshire. I
16 don't care what they did in Guam or Alaska, okay.

17 I want to know what we need to do here. That
18 is all I am going to say, Judge Moats. I am done for
19 the day.

20 JUDGE MOATS: Now you are.

21 JUDGE SWOPE: But that really upset me when
22 we spent time going over the Board of Pharmacy. I
23 said why are we doing this? They dismissed part of
24 that in February. What are we doing this for?

1 So when I got that thing yesterday after I
2 had listened to God knows how many sexual abuse cases
3 of children, never mind. What is it, Roseanne
4 Roseannadana, Saturday Night Live, never mind.

5 You know, that really upset me. I guess you
6 probably figured that out.

7 Thank you, Judge Moats.

8 JUDGE MOATS: You are welcome.

9 Now let's talk about overall the path this
10 case is going to take. This is not simple, and
11 anybody that says it is is whistling past the
12 graveyard.

13 It is complicated. There are so many parties
14 and there are so many moving parts. We have this
15 issue of case management.

16 The Plaintiffs say, "Let's try every party,
17 every issue next June, and let's have a bifurcated
18 trial with liability and a punitive damage
19 multiplier."

20 There was a seismic shift in West Virginia in
21 2015. Things changed as we know it in the field of
22 litigation.

23 Joint and several liability for the most part
24 was abolished, and a new punitive damage statute was

1 enacted that same year.

2 I was in the asbestos litigation back in
3 2002. Union Carbide was the last defendant standing.
4 I went through a five-week trial.

5 We bifurcated that case, liability, and you
6 had a punitive damage multiplier. What does the
7 statute say now? It doesn't say the plaintiffs can
8 bifurcate.

9 It says that the defendant may request for
10 bifurcation, and if it is granted, the jury first has
11 to decide the amount of the punitive -- or of the
12 compensatory damages before it can be submitted to the
13 jury on the issue of punitive damages.

14 So how do we do that? We can't. The joint
15 and several statute completely ended that.

16 We just wrapped up the Airport litigation,
17 the Airport up the street that collapsed when, back in
18 2000 --

19 JUDGE HOKE: In '15.

20 JUDGE MOATS: In March and all these
21 defendants in the case across the country, but we were
22 under the old law.

23 When it came time to go to trial, it was
24 again, the last defendant standing.

1 That was taken up on a writ of prohibition
2 because the last defendant wanted to be the defendant
3 that was viewed as the most culpable on the verdict
4 form.

5 When the Supreme Court summarily refused that
6 writ, the case settled within 15 minutes, right?

7 JUDGE SWOPE: Yes.

8 JUDGE MOATS: That is not where we are.
9 Every defendant will be on the verdict form.

10 Then we have the new matter that we have
11 never dealt with before. I have never dealt with it
12 before. I haven't had a jury trial yet where it has
13 come up, non-party fault.

14 But yet in this case I think almost everybody
15 has filed a notice of non-party fault, and everyone
16 that I read I keep looking for my name to see if I am
17 in there. So far, I haven't seen my name in there as
18 causing this.

19 It is the old thing that it is everybody's
20 fault; it is nobody's fault. I understand that.

21 I mean, we have all these categories, but it
22 is something that we are going to have to deal with
23 with bated breath.

24 We have never done this before. It is going

1 to take time, and we will deal with it, but we have to
2 decide first issues first.

3 We have 31 new motions to dismiss pending
4 that are going to have to be dealt with before we know
5 who all the players are.

6 JUDGE SWOPE: Can I say something?

7 JUDGE MOATS: Go ahead.

8 JUDGE SWOPE: I just want to say that I sure
9 hope those 31 to 33 motions that you-all filed aren't
10 going to be cookie-cutter regurgitations of the ones
11 that have already been filed and ruled on.

12 I think there is a writ of prohibition on
13 that, isn't there? What is going on with that writ in
14 Charleston?

15 Didn't you-all file a writ about the law of
16 the case?

17 Where is that at?

18 MR. FITZSIMMONS: Your Honor, the writ is
19 pending before the Supreme Court. They have issued a
20 briefing schedule --

21 JUDGE SWOPE: It hasn't been ruled on yet?

22 MR. FITZSIMMONS: No, Your Honor, it has
23 not.

24 JUDGE SWOPE: Okay, that is just part of my

1 point. You know, we just had another mass litigation
2 case where all the briefs we got were cookie-cutter,
3 cookie-cutter.

4 So I really hope, folks, that you have raised
5 novel new things that weren't raised before, and I
6 hope that I am not going to read 31 or 33 or whatever
7 it is of the same thing.

8 JUDGE MOATS: All right, now let's talk
9 about something else.

10 What all of you seem to say is the real issue
11 here, what Judge Polster says seems to be the real
12 issue is a common theme across all the cases in front
13 of him that have been brought in from all over the
14 country, and I understand it has been alleged all over
15 the country.

16 It is our understanding from Judge Polster
17 that these cases are pending in state courts in all
18 but two states, and that is the issue of public
19 nuisance, and we hear that all the time.

20 Now we cannot see or we don't see in any of
21 the complaints exactly what statute you-all are
22 raising that under.

23 Mr. Farmer, can you tell us the statute that
24 you are basing your cause of actions on?

1 MR. FARMER: Your Honor, there is a robust
2 common-law of public nuisance in West Virginia, and by
3 the way, this was briefed in the motions to dismiss
4 that are pending before Your Honors.

5 JUDGE MOATS: Okay, let me stop you there.
6 You-all need to back up. You say you are basing it in
7 on common law?

8 MR. FARMER: Yes, Your Honor.

9 JUDGE MOATS: For a county commission or a
10 city to bring a common law --

11 MR. FARMER: No, the hospitals. I am
12 speaking on behalf of the hospitals.

13 JUDGE SWOPE: Well, who is talking for the
14 counties and the cities?

15 JUDGE MOATS: I understand your hospital
16 issue. You are talking nuisance, and that is a
17 different matter.

18 MR. FARMER: Okay.

19 JUDGE MOATS: I am talking of all the
20 plaintiffs.

21 MR. FARMER: I am hospitals only.

22 JUDGE MOATS: Okay, public nuisance. Who is
23 speaking for counties and cities? Mr. Fitzsimmons?

24 MR. FITZSIMMONS: Good morning, Your Honor,

1 Clayton Fitzsimmons.

2 JUDGE MOATS: Okay, we need you to speak up
3 and if necessary, come up here to the microphone so
4 that we can hear you.

5 What is your statute?

6 MR. FITZSIMMONS: I don't know the numeric
7 number off the top of my head. I can pull that out of
8 the complaint, but I know that the counties, that
9 there is a West Virginia Code, an ordinance, that
10 allows -- the statute allows them to pass an ordinance
11 declaring things to be public nuisances and also to
12 provide them a remedy to abate that.

13 JUDGE MOATS: You are saying that there is a
14 statute that allows a county to pass an ordinance?

15 MR. FITZSIMMONS: Yes, Your Honor.

16 JUDGE MOATS: What is that statute?

17 MR. FITZSIMMONS: I can pull it for you. I
18 don't have it in front of me.

19 JUDGE MOATS: Because I haven't seen it.

20 MR. FITZSIMMONS: It was pled in our brief.

21 JUDGE MOATS: What about the cities?

22 MR. FITZSIMMONS: I don't represent the
23 Cities. I can't speak on the Cities' behalf.

24 JUDGE MOATS: All right. I mean, I have

1 looked at it. The only statute I can see is 16-3-6.
2 It is just nuisance affecting a county.

3 Basically it says county commissions or
4 municipalities all have a right to apply to circuit
5 court for an injunction to restrain or to abate a
6 public nuisance.

7 However, there was a case back in 1982,
8 Berkeley County Commission versus Chavez. Under the
9 syllabus point it says that Code 16-3-6 authorizes
10 public officials, including a county commission, to
11 apply for circuit court injunctions to abate public
12 health nuisances.

13 County Commissions are not authorized to
14 petition for injunctions against any other public
15 nuisance.

16 But you are saying that has been overruled or
17 what?

18 MR. FITZSIMMONS: I am saying that is not
19 the authority under which the counties are proceeding.

20 Again, Your Honor, I apologize. I don't have
21 that off the top of my head.

22 JUDGE MOATS: Okay.

23 MR. FITZSIMMONS: I can get that to you and
24 I can provide you additional information if Your Honor

1 would wish.

2 JUDGE MOATS: Okay.

3 MR. FITZSIMMONS: This issue was briefed and
4 the motion has been dismissed that Judge Hummel had
5 denied.

6 JUDGE SWOPE: Yes, because we are reading
7 things like throwing out the Board of Pharmacy, you
8 know, case in point.

9 MR. FITZSIMMONS: Your Honor, would you like
10 for us to provide a supplemental authority or position
11 on that? We would be happy to do so.

12 JUDGE MOATS: Sure, I would.

13 The same for the cities, what is the
14 authority for the cities, and are you saying that all
15 these counties have enacted ordinances?

16 MR. FITZSIMMONS: The cities -- I believe
17 that the counties that I know we represent have passed
18 ordinances declaring the opioid epidemic a public
19 nuisance.

20 JUDGE MOATS: When, before or after?

21 JUDGE SWOPE: Is it *expo facto* law? It is
22 something that just passed?

23 Do you know when?

24 Ms. Chafin, you represent some. Did your

1 county do anything like that? You represent my
2 county, Mercer County.

3 Did they do that? I don't know. Do you know
4 if Mercer County passed an ordinance? Anybody?

5 MR. FITZSIMMONS: Your Honor, I am lead
6 counsel for the hospitals only. I don't know.

7 JUDGE SWOPE: That is why I asked Ms.
8 Chafin.

9 MR. FITZSIMMONS: I am sorry. I thought you
10 were looking at me.

11 JUDGE SWOPE: Yes, I asked Ms. Chafin.

12 MS. CHAFIN: Your Honor, I am not aware of
13 it.

14 JUDGE MOATS: Because in looking at the
15 complaints, I see nothing. There hasn't been anything
16 alleged by any county or city that they are alleging
17 something under an ordinance.

18 We have a case going clear back -- it has
19 been cited by the Supreme Court several times, Parker
20 versus The City of Fairmont, a 1913 case.

21 It says Counsel may abate only matters a
22 nuisance which is recognized as such per se, which
23 means that in and of itself.

24 So if we are talking opiates, it would have

1 to be oxycodone in and of itself is a nuisance, and I
2 don't think that applies -- or granted as such by a
3 lawful statute or ordinance.

4 So the question would be does a county or
5 city just have -- do they have the authority to just
6 say this is a nuisance and it becomes so?

7 I question whether that is the authority.

8 If somebody puts a pile of radioactive
9 material, that would be a nuisance per se, but does a
10 county commission or authority -- or a county, rather,
11 or a city just have the authority to say, "We declare
12 this is a public nuisance"? That is the question.

13 If that is something you are alleging, that
14 is what you are going to need to look at.

15 As I said, Chapter 16, Article 3, Section 6
16 allows it to be done if that is what you are operating
17 under.

18 We want to know what you are operating under
19 so we can decide which way to go.

20 Injunctions regularly are decided by courts.
21 It is an equitable type remedy ordinarily that
22 wouldn't be entitled to a jury trial. It would be
23 decided by the Court.

24 The Court would determine what the proper

1 abatement is. Judge Polster is dealing with that. He
2 took the position, as I understand it, that there is
3 no absolute right to a jury trial, but he decided to
4 give them one.

5 Well, we haven't decided that. We have a
6 case, Turner versus Camden Clark Memorial Hospital,
7 that says where there are legal issues coupled with
8 injunctive -- a request for injunctive relief, the
9 legal issue, if it is to be tried by a jury, it is to
10 go first.

11 Now we recognize these time frames. The
12 Plaintiffs are saying we want this to go to trial.
13 Our towns and cities are bleeding. Please help us.
14 Get us to trial and stop this public nuisance.

15 JUDGE SWOPE: Our hospitals are suffering.

16 JUDGE MOATS: And our hospitals are
17 suffering.

18 The Defense is saying this is going to take
19 we don't know how long to prepare all the discovery.

20 We are willing to cut through it all. We are
21 willing to have a trial as soon as possible on
22 the issue of public nuisance before the Court.

23 We understand Judge Polster seems to say that
24 probably many plus percent of the liability discovery

1 has already been done. You have got a report and you-
2 all have access to it.

3 Well, you-all are asking for this to be
4 abated. If it is proven that it is a public nuisance,
5 we have that authority.

6 Now right now the question is well, are our
7 hands tied under Turner versus Camden Clark Memorial
8 Hospital?

9 You-all don't have to try it. You say "Hey,
10 we waive that. We want this to be decided."

11 I don't think anybody understands the
12 magnitude and the time periods that we are talking
13 about here that this is going to take.

14 There is no way that we can have a total
15 joint trial of all these issues against all these
16 defendants. I don't know how to do it. None of us
17 do.

18 It is going to overwhelm the court system. I
19 don't know what facility we are going to use. This is
20 the largest courtroom that we would have.

21 I have been told it would be extremely
22 problematic to tie this place up for several months.

23 How long would we be talking about having a
24 trial, six months, eight months, a year or more?

1 Are we going to be able to have jurors commit
2 to that? How do we do this logistically?

3 Judge Polster was able to do things we can't
4 because of this seismic shift in our role in the state
5 with the joint and several liability, that statute.

6 He is severing these. He is allowing the
7 Cabell County and Huntington case to be severed, to
8 just be tried against a particular group of defendants
9 because he is doing that out in Cleveland with
10 pharmacies and he is sending other cases for the same
11 purpose.

12 He is going in a different direction we can't
13 go or at least there is no way that we know because
14 everybody has to be on that verdict form and fault has
15 to be determined for everybody.

16 Maybe you-all can come up with ideas that we
17 don't or we can't. We have to be innovative. We
18 can't do the same things we have always done even
19 though we have done it for a long time.

20 I have been doing this finishing my 23rd year
21 on the bench. I have never done anything like this
22 before. I don't know if any of you have actually
23 worked with this.

24 But we can do that if you-all want to. I

1 can't force you to do anything you don't want to do.
2 We are willing to address the issue of public
3 nuisance.

4 That is what this is all about. It is what
5 it has always been about. It is what Judge Polster
6 says it is all about everywhere.

7 JUDGE SWOPE: It is what the Oklahoma court
8 said it was all about. They tried it for what, 33
9 days out there, Judge?

10 JUDGE MOATS: Thirty-three days. Many of
11 the same defendants who are in this case were
12 involved. That case didn't actually get tried. I
13 understand J&J was the last one standing until the
14 time it went to trial.

15 But that is where we are. You need to tell
16 us if you are willing to do that or not. We want to
17 know and we can focus on that.

18 When we open up the discovery, we don't need
19 to have an all-issues trial with public nuisance right
20 off the bat.

21 We can decide, number one, whether it is
22 public nuisance as the discovery goes along, how to
23 complete a public nuisance if it is so found.

24 So it is not critical to have all the

1 discovery complete. We can do it in phases.

2 I told you before we were going to give you
3 time for both sides to respond to case management.
4 The Plaintiffs said we can do everything next June.

5 The Defendants say that is impossible. They
6 still have to cite the law why it is not possible.

7 I don't know how we are going to do this.
8 Mr. Farmer has 26 hospitals.

9 How are we going to do this with all those
10 hospitals and they are totally separate parties?
11 Where would we put everybody?

12 Now we have 68 plaintiffs.

13 We need your assistance. It can't be, "Here,
14 Judge, you decide this. You figure it out."

15 We are not smart enough, at least I am not.
16 Judge Swope is much smarter than I am.

17 JUDGE SWOPE: I don't know about that.

18 JUDGE MOATS: I look at him and say, "Here,
19 give me a game plan. I need help."

20 We need your help. We need you to work
21 together. The best case scenario, resolve these
22 cases. That is the best case scenario. Resolve these
23 cases and the federal cases. You come up with a plan
24 where an entire state is taken off of the table.

1 That would be the best case scenario.

2 I don't know how it plays in the federal
3 negotiating class. I have no idea. There have to be
4 things happening behind the scenes that we don't know
5 about, we will never know about.

6 Does that somehow tie our resolution judge's
7 hands as far as what can be done or when it can be
8 done here? I don't know. Maybe some of you do.

9 We sort of feel like we are somewhat in the
10 dark. We have learned a lot in the past two and a
11 half months.

12 Judge Polster tells other judges he doesn't
13 want them to go through what he has gone through over
14 the past two years.

15 We would like to have all his knowledge today
16 that he has worked so hard over two years to obtain
17 but we don't.

18 We have the benefit of all of his orders and
19 some of the transcripts, which have been extremely
20 helpful to us, and we will learn as we go along.

21 Right now it seems like chaos as do a lot of
22 these cases when we start. Over time we can narrow
23 them down and bring order to the cases and we will
24 here but it is going to take hard work and it is going

1 to take tremendous cooperation.

2 It cannot be and it won't work if every time
3 there is something said there has to be an argument
4 and a fight about it or a writ of prohibition. It
5 just can't work.

6 Next week, next Thursday Judge Alsop and I
7 and going to be back up here and hope we are going to
8 bring to resolution the tobacco litigation in West
9 Virginia that has been pending since 1998,
10 approximately 1,300 plaintiffs, all the major tobacco
11 companies, 22 years in litigation, writs, appeals,
12 trials, attempts to get jurors.

13 Next week hopefully, hopefully we can finally
14 deal with that case.

15 This case has the same potential. This case
16 has the potential to last that long. It does. You-
17 all may disagree, but it does unless you decide not
18 to.

19 So that is what we have to say today. We
20 don't have a lot of answers for you. I wish we did,
21 but this is not something that is going to happen
22 overnight.

23 We are no more prepared now to enter a case
24 management order than we were two and a half months

1 ago until we get these issues decided preliminarily.

2 So you have your briefing schedule for the
3 statute of limitations. We want you to rack them up.
4 We want to know. If you are alleging that there are
5 individual nuisance statutes that counties enacted,
6 and the statute by the way is supplemental (3)(k)(8)
7 probably that you are referring to.

8 Then there is a statute dealing with
9 municipalities and that is 8-12-5, Paragraph 23.

10 But again, it is going to have to be
11 something per se. It can't be just because the county
12 commission or a city says this is a public nuisance.
13 They have no authority to declare something a public
14 nuisance that I am aware of.

15 I think that you are going to find out the
16 Supreme County cases say likewise unless it is
17 pursuant.

18 So I want you to look at that and I want you
19 to seriously consider and discuss seriously among
20 yourselves.

21 I want to know about this proposal that we
22 have to try the issue before the Court on public
23 nuisance, Phase I of the case, as you-all go about
24 your discovery for abatement issues, costs, and so

1 forth, and we will open it up for damages on all these
2 issues.

3 Then we will finish the matter when that is
4 complete and set the rest of it aside for the time
5 being or you can rely on Turner versus Camden Clark
6 and say, no, I am not going to do it, that this is
7 going to be a war to the bitter end.

8 That is how we are going to go about our
9 business. The choice will be yours.

10 JUDGE SWOPE: The whole thing, the point is
11 that, you know everybody keeps saying how it is
12 rattling us and you raise that point and we have all
13 said it.

14 We are offering right now a chance to stop
15 the bleeding. We are offering a chance to stop the
16 bleeding and then we can pick up the pieces as to
17 that.

18 But you know, Judge Moats, I think you hit
19 the nail on the head.

20 JUDGE MOATS: Judge Tabit, anything from
21 your standpoint?

22 JUDGE TABIT: Just from our standpoint,
23 obviously on the decision made as to how we are going
24 to be moving forward, our panel certainly looks

1 forward to working with that and moving toward some
2 type of an amicable resolution to the matters.

3 JUDGE MOATS: Okay, are there any issues or
4 anything else?

5 I am not going to hear any arguments or
6 anything, but is there anything procedurally that we
7 need to discuss or bring up here today?

8 Mr. Meadows?

9 MR. MEADOWS: Your Honor, if I could just
10 add one thing.

11 JUDGE MOATS: Go ahead.

12 MR. MEADOWS: Just for the good of the
13 order, the defendants work together on a lot of the
14 issues and we have the ability to communicate among
15 ourselves and handle almost any issue that this panel
16 wishes to raise.

17 It would be helpful in advance of future
18 status conferences if we could potentially work with
19 Plaintiffs' Liaison Counsel and Ms. Fields to agree on
20 the agenda.

21 For instance, today when you raised the
22 statute of limitations, there are many issues coming
23 from the Defendants which are related to that. I have
24 my own client I am representing here.

1 Today when you asked the question off the
2 cuff, I pivoted to look at someone who doesn't
3 represent my client because I knew personally that he
4 had a vested stake in that.

5 JUDGE MOATS: Sure.

6 MR. MEADOWS: And certainly all these
7 defendants may have something to say and I hate to
8 commit on behalf of the Defendants when we didn't even
9 know it was coming.

10 JUDGE MOATS: I understand, but up to this
11 point it has been hard to really come up with a set
12 agenda because it has been such a moving target as the
13 days goes by leading up to a conference.

14 MR. MEADOWS: I appreciate that, Your Honor.
15 Before they drag me out of here and tar and feather me
16 afterwards, I want to make sure I have at least said
17 that so that we can perhaps work on agendas in the
18 future just with Ms. Fields if that is appropriate.

19 JUDGE MOATS: All right, another thing,
20 communicating with our Mass Litigation manager, Ms.
21 Fields, if you communicate with her it cannot be one-
22 sided and unfair. If one side, one attorney
23 communicates with her, let them advise the other
24 party.

1 We all know you can't do that and it puts her
2 in a very difficult position, and it is not proper
3 just to communicate to her, "Hey, what do you think
4 the judges would do with this." That is not her
5 function at all.

6 Anyway, anything else? Yes, sir. State your
7 name, please.

8 MR. SHKOLNIK: Your Honor, Hunter Shkolnik
9 of Napoli Shkolnik. I am one of the appointed co-
10 leads. Thank you for your time today.

11 One issue you brought up, I think it would be
12 very helpful to the panel, there are other litigations
13 consolidated on issues going on across the country.

14 In fact, in New York we have a trial date
15 scheduled for March 20th. Public nuisance will be the
16 only trial.

17 What I am suggesting in the future as part of
18 our agenda that we also provide you with an update of
19 any other consolidated litigations that would help the
20 Panel to know what else is going on other than Judge
21 Polster's orders that have been issued to help
22 streamline that case.

23 In fact, some of my colleagues here, we are
24 all going to be there Monday hashing out issues

1 regarding that trial.

2 I know you are trying to get your arms around
3 a mile here, and Judge Garguilo in New York is
4 wrestling those same issues and I just want to suggest
5 that we could provide updates.

6 JUDGE SWOPE: Do you have the same statute
7 up there that we do on the verdict form. I don't
8 think you do, do you? About 25 states have that. I
9 know because I looked at in the Airport case.

10 MR. SHKOLNIK: We don't have -- we don't
11 have to have everybody on, but there is a portion of
12 liabilities -

13 JUDGE SWOPE: But you don't have to put non-
14 parties, people who have settled, everybody else that
15 you can possibly throw into the mix on your verdict
16 form, right?

17 MR. SHKOLNIK: No, we do not.

18 JUDGE SWOPE: Okay.

19 JUDGE MOATS: Our position to what you say
20 is we would absolutely love to have that. For us it
21 is almost impossible to find. We don't have any way
22 of digging all that out. So it would be very helpful
23 to know that.

24 Along the same lines, back in 2007 and '08 we

1 had -- you may be seated.

2 JUDGE MOATS: We had a case that was called
3 the Digitek Park litigation. I don't know if any of
4 you were involved in any of that litigation, but there
5 was an MBL in that.

6 That went to Judge Joseph Goodwin here in the
7 Southern District of West Virginia, and our Mass
8 Litigation Panel had the West Virginia cases, and we
9 coordinated that with Judge Goodwin.

10 He really was great in leading that. He
11 coordinated, reached out to all the other state court
12 judges, and it was not nearly as massive as this, but
13 we even had a joint conference in Philadelphia with
14 the state court judges and Judge Goodwin.

15 It was incredibly helpful to know what was
16 happening across the country, not just here in West
17 Virginia but for the other judges as well, and we
18 worked closely together as that case was resolved.

19 So it would be helpful for us to know what is
20 happening across the country. We can find out in the
21 federal litigation, but we just don't have anyway to
22 know what goes on in other states.

23 So we would appreciate both sides working
24 with us to keep us informed. It doesn't have to be

1 just when we come to these hearings.

2 You can do that periodically, and I would
3 like to know that because I even searched on news
4 sites to see if there was any news about that in other
5 states.

6 MR. SHKOLNIK: Your Honors, we can work with
7 Defense Counsel and come up with not a one-sided but
8 we will come up with what should be jointly submitted.

9 JUDGE MOATS: Sure, and maybe you can submit
10 that to us periodically, okay.

11 MR. SHKOLNIK: We would be happy to do that.
12 Thank you.

13 Is that agreeable, Mr. Meadows?

14 MR. MEADOWS: Yes, Your Honor. I am in the
15 pit of this large room, but I am sure we can come up
16 with an agreement.

17 JUDGE MOATS: I appreciate that.

18 MR. SHKOLNIK: Thank you.

19 JUDGE MOATS: Another issue that I wanted to
20 discuss which Judge Hoke reminded me of, one thing at
21 the federal level, I have been able to see Judge
22 Polster has appointed special masters under Rule 53 of
23 the Rules of Federal Civil Procedures.

24 That is fairly in-depth rule and it looks

1 like those special masters are kept very busy and they
2 do a lot of work.

3 He also has, I assume, some of the federal
4 magistrate judges overseeing some of the discovery
5 issues.

6 Our Rule 53 -- has anybody ever looked at
7 that? Take a look at that. It is a rule that says
8 absolutely nothing.

9 JUDGE SWOPE: It basically says we are going
10 to do what we have always done.

11 JUDGE MOATS: It says that we can have
12 commissioners and they can do what has always been
13 done as far as chancellors, commissioners have been
14 done. Well, what is that? It doesn't say.

15 So what does that rule say? I don't have any
16 idea. You have the rule there, Mr. --

17 JUDGE SWOPE: I have got it here, too.

18 JUDGE MOATS: Can you explain that rule?

19 MR. MEADOWS: I wouldn't dare to do that,
20 Your Honor.

21 JUDGE MOATS: Okay. I have read it. It
22 doesn't say much of anything. Here it is. Rule 53
23 states that Commissioners and Chancellors shall be
24 known as Commissioners.

1 “The practice respecting the appointment of
2 such commissioners and references to them respecting
3 their powers and duties and powers and duties of
4 courts to hold a hearing upon their reports shall be
5 in accordance with the practice heretofore followed in
6 West Virginia.”

7 What does that mean? I have no idea. So
8 anyway, what we have done in the past is to appoint a
9 discovery commissioner when issues come up, and we
10 have been very successful and we have had
11 commissioners do a great job.

12 That brings us to you, Mr. Arceneaux. We are
13 extremely disappointed in your behavior in this case.
14 Mr. Arceneaux has been one of our discovery
15 commissioners. So when I saw him in the first case, I
16 think he did this to us on purpose.

17 JUDGE SWOPE: This is how you escape it.

18 JUDGE MOATS: This is how he escaped our
19 clutches. Jay has done a wonderful job as a discovery
20 commissioner, sometimes on such short notice we were
21 almost embarrassed to ask him, but he would drop what
22 he was doing and have hearings and issue responses.

23 He was always thoughtful and both sides
24 appreciated him, and that is what we are looking for.

1 So what I am going to ask both sides here is
2 to submit names of persons, lawyers, here in this
3 state that you believe would be acceptable, hopefully
4 that you can get together and agree on.

5 Now this is going to be difficult in this
6 case because of the wide breadth of people involved,
7 and I am going to ask that we use the federal Rule 53
8 as a model because number one, it is an issue of
9 disqualification, and Rule 53 of the federal rules
10 specifically addresses who would be disqualified.

11 It is almost going to be as if that person,
12 which they are, is going to be in a judicial capacity
13 and would be disqualified in the same category as I or
14 Judge Swope or any other judge here.

15 So it is going to have to be somebody who is
16 not involved in the litigation, somebody who is not
17 involved before us in other cases, somebody who is not
18 involved with you in an adversarial role in cases
19 because that would not be proper either.

20 So it really narrows the scope of available
21 people.

22 There would be a category of possible people
23 retired or senior status judges that could be brought.
24 A lot of them don't have support staff. So we would

1 have to be looking at how to get them support staff to
2 do this as well.

3 I have no idea the extent of the discovery
4 disputes that have taken place in federal court. I
5 can only assume they have been numerous based upon
6 what I have seen and read.

7 We don't have the capacity to do that. We
8 don't have the time, and it is going to have to be
9 done with a commissioner.

10 So we are going to ask that you please work
11 together and come up with a proposed list for us to
12 look at.

13 All right, is that agreeable? Thank you all.

14 Anything else? Yes, ma'am. State your name.

15 MS. KEARSE: Judge, Ann Kearse with Motley
16 Rice. I have the eight other cases that are pending
17 in Marshall County.

18 I submitted a proposed order for transfer to
19 the case, a joint order. I submitted that yesterday.
20 So it may not have had time, but it is pending, a
21 proposed order of transfer to be in, if Your Honor
22 judges me to be qualified as --

23 JUDGE MOATS: You were there, weren't you?

24 MS. KEARSE: I was there, Your Honor, and in

1 some of the other cases.

2 JUDGE MOATS: Just as an aside, I was
3 telling the panel this morning -- you can be seated
4 unless you have something else.

5 MS. KEARSE: My co-lead, my partner, Joe
6 Rice, is the lead in the MBL and would be happy to
7 provide information about the MBL from the other state
8 proceedings, Your Honor.

9 JUDGE MOATS: Okay, again, that is what I
10 want you-all to do to see if we can do this and is it
11 possible to attempt to mediate all that stuff, and so
12 you will have an insight there and reason perhaps for
13 them to be involved.

14 So as soon as that proposed order comes
15 through, if the Defendants are agreeable, just sign it
16 and submit it.

17 So we have come a long -- as I started to
18 say, my very first case on this Mass Litigation Panel
19 was the asbestos litigation.

20 I had never done anything like this before.
21 My first hearing was in Judge Haden's courtroom. Were
22 you there for that one?

23 I remember I walked in and every seat in the
24 room was taken, the jury box, counsel table, attorneys

1 lined up around the wall and out in the hall.

2 I stood up and I thought what have I gotten
3 myself into? So it was incredible. Everybody was
4 very cooperative.

5 When I asked everybody, I said, "We are going
6 to have an expedited trial because we already have the
7 first liability trial set in September."

8 I was dealing with the deliberate and intent
9 part of all of those cases. I said, "Everybody,
10 please pull out your calendars. I want to pick a date
11 that is convenient for everybody. What is convenient
12 for me is December 1. We will try it the whole month
13 of December. Any objections?" Dead silence.

14 I have two lawyers in front of me now for a
15 car wreck case and I can't get them to agree on a date
16 over the next nine months.

17 So I want to say these are a different breed
18 of cases, and it takes incredible cooperation,
19 diligence, and a willingness to cooperate and work
20 together. That is the only way this can be done, and
21 that is what we are asking for.

22 We will work hard because we have been
23 working hard. We just ask you to not do things unless
24 they are absolutely necessary and don't raise issues

1 just for the sake of raising them.

2 Don't be afraid to give ground. Take a close
3 look at your defendants. Judge Polster told the
4 plaintiffs, the ones you are not serious about, get
5 rid of them.

6 This case can either be done or it can
7 collapse under its own weight. Right now it is
8 extremely heavy, extremely, and unless some of the
9 issues and parties are narrowed down, it is going to
10 remain that way.

11 It is my understanding the last time you told
12 me that you were going to cast aside or at least shut
13 off all the individuals.

14 Has that been done? I think I have signed
15 some orders to that effect.

16 MR. FITZSIMMONS: Yes, Your Honor.

17 JUDGE MOATS: All of them have been?

18 MR. FITZSIMMONS: Yes, they have been
19 dismissed or settled.

20 JUDGE MOATS: All right, thank you. Okay,
21 with that, anything else?

22 I appreciate all of you coming here today. I
23 wish you a joyous upcoming holiday season, and as soon
24 as we get these briefs sent in, we will reset the next

1 hearing. We will reset something that was necessary
2 in the meantime.

3 Thank all of you so much.

4 (WHEREUPON, at 11:08 a.m., the
5 hearing was concluded.)
6

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

I, Donna Miller-Mairs, Certified Court Reporter, hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of the evidence introduced and proceedings had in the aforementioned case on the 6th day of December, 2019, as reported by me by Stenomask procedure.

I hereby further certify that the transcript within meets the requirements of the Code of the State of West Virginia, 51-7-4, and all rules pertaining thereto as promulgated by the Supreme Court of Appeals.

Given under my hand this 27th day of December, 2019.

My commission expires November 22, 2022.

DONNA MILLER-MAIRS
Certified Court Reporter

Donna Miller-Mairs, CCR